

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE**

DECLARATION OF JENNIFER D.
LOYND REGARDING
VERIFICATION OF STATE COURT
DOCUMENTS

WASHINGTON STATE LIQUOR
AND CANNABIS BOARD, an
administrative agency of the State
of Washington, and PATRICK
MATTHEWS, individually and as
employee and agent of
WASHINGTON STATE LIQUOR
AND CANNABIS BOARD

County of Thurston)

ATTORNEY GENERAL OF WASHINGTON
Torts Division
7141 Cleanwater Drive SW
PO Box 40126
Olympia, WA 98504-0126
(360) 586-6300

1 I am the assistant attorney general assigned to represent Defendants
2 Washington State Liquor and Cannabis Board and Patrick Matthews.
3

4 2. Pursuant to LCR 101(c), attached are true and correct copies of the
5 documents filed in the Pierce County Superior Court File No. 19-2-04342-32. I
6 am over the age of 18, competent to testify as to the matters stated here, and make
7 this declaration based on my personal knowledge.
8

9 3. I declare under penalty of perjury under the laws of the State of
10 Washington that the foregoing is true and correct.
11

12 DATED this 15th day of January, 2020.

13
14
15
16
17 JENNIFER D. LOYND, WSBA #33129
18 Assistant Attorney General
19 Attorney General's Office
20 P.O. Box 40126
21 Olympia, WA 98504-0126
22 Telephone: 260-586-6300
23 Email: Jennifer.Loynd@atg.wa.gov
24 Attorney for Defendants
25
26

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2020, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Attorneys for Plaintiff:

Andrew Mitchell
Vicki L. Mitchell
MITCHELL & MITCHELL PLLC
1710 North Washington Street, Suite 200 Spokane, WA 99205
Phone: 509-315-9890
Fax: 509-315-9891
amitchell@mitchell-lp.com
vmitchell@mitchell-lp.com

DATED this 16th day of January, 2020.

ROBERT W. FERGUSON
Attorney General

s/Jennifer D. Loynd
JENNIFER D. LOYND, WSBA#33129
Assistant Attorney General
Attorney General's Office
P.O. Box 40126
Olympia, WA 98504-0126
Telephone: 260-586-6300
Email: Jennifer.Loynd@atg.wa.gov
Attorney for Defendants

COPY
Original Filed
OCT 14 2019

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

PERRY FAILING, an individual,

Plaintiff,

v.

WASHINGTON STATE LIQUOR AND
CANNABIS BOARD, and administrative
agency of the State of Washington; and
PATRICK MATTHEWS, individually and as
employee and agent of WASHINGTON
STATE LIQUOR AND CANNABIS
BOARD,

Defendants.

No.

19204342-32

SUMMONS

TO: PATRICK MATTHEWS:

A lawsuit has been started against you in the above captioned Court by the plaintiff listed above. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing and serve a copy upon the undersigned attorney for the Plaintiff within 20 days after service of this Summons, excluding date of service, or a Default Judgment may be entered against you without notice.

A Default Judgment is one where the Plaintiff is entitled to what it asks for because you have not responded. If you serve a Notice of Appearance on the undersigned attorney for the Plaintiff, you are entitled to notice before a Default Judgment may be entered.

SUMMONS - 1

MITCHELL & MITCHELL PLLC
1710 NORTH WASHINGTON STREET, SUITE 200
SPOKANE, WASHINGTON 99205
PHONE 509.315.9890 / FAX: 509.315.9891

COPY

1
2 You may demand that the Plaintiff file the lawsuit with the Court. If you do so, the
3 demand must be in writing and must be served upon the undersigned attorney for the Plaintiff.
4 Within 14 days after service of the demand, the Plaintiff must file the lawsuit with the Court,
5 or the service upon you of this Summons and Complaint will be void.

6 If you wish to seek the advice of an attorney in this matter, you should do so promptly
7 so that your written response, if any, may be served on time.

8 This Summons is issued pursuant to Rule 4 of the Civil Rules for the Superior Court
9 for the State of Washington.

10 DATED this 14th day of October 2019.

11 MITCHELL & MITCHELL PLLC

12 By: _____

13 Andrew Mitchell, WSBA 30399

14 Vicki L. Mitchell, WSBA 31259

15 Attorneys for Plaintiff

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27 SUMMONS - 2

28 MITCHELL & MITCHELL PLLC
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COPY
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OCT 14 2019

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

PERRY FAILING, an individual,
Plaintiff,

v.

WASHINGTON STATE LIQUOR AND
CANNABIS BOARD, and administrative
agency of the State of Washington; and
PATRICK MATTHEWS, individually and
as employee and agent of WASHINGTON
STATE LIQUOR AND CANNABIS
BOARD,
Defendants.

No.

19204342-32

COMPLAINT

COMES NOW, the above-identified plaintiff, Perry Failing, through their undersigned
counsel, and alleges as follows:

PARTIES:

1.1 Plaintiff, Perry Failing, is an individual, a citizen of the United States and
resident of the State of Washington, County of Spokane.

COMPLAINT - PAGE 1

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COPY

1 1.2 The Washington State Liquor and Cannabis Board (hereinafter "WSLCB") is
2 an administrative agency of the State of Washington. Among its powers is the right to sue
3 and be sued.

4 1.3 Patrick Matthews is an employee and agent of the WSLCB, and at all times
5 material to this Complaint and action, acted as an enforcement agent of the WSLCB.
6

7 1.4 Plaintiff sues all defendants in their individual and official capacities.

8 1.5 This is a civil action seeking damages against the above-listed defendants for
9 committing acts, under color of State law, which deprived plaintiff of his constitutional rights
10 secured under the Constitution and Laws of the United States. Defendants acted arbitrarily
11 and capriciously in depriving plaintiff of his rights under the Constitution and Laws of the
12 United States.
13

14 **JURISDICTION AND VENUE:**

15 2.1 Plaintiff re-alleges paragraphs 1.1 through 1.5, inclusive, as though fully set
16 forth herein.

17 2.2 This Court has jurisdiction of the above-captioned matter pursuant to the
18 Supremacy Clause of Article VI of the United States Constitution. *See Felder v. Casey*, 487
19 U.S. 131 (1988).
20

21 2.3 Venue is proper in this Court as all acts complained of herein occurred within
22 Spokane County. *See* RCW 4.12.020.

23 2.4 Plaintiff has complied with the requirements of RCW 4.96.020 and more than
24 60 days have elapsed.
25

26
27 **COMPLAINT - PAGE 2**

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FACTS:

3.1 Plaintiff re-alleges paragraphs 1.1 through 2.4, inclusive, as though fully set forth herein.

3.2 Upon information and belief, on or about August 15, 2017, Patrick Matthews began an investigation of plaintiff for allegedly growing marijuana illegally at plaintiff's residence located at 1426 North Bowdish Road in Spokane.

3.3 Patrick Matthews' source of information was Amanda Ambrose. Amanda Emerson Ambrose is the ex-significant other of plaintiff and they share a child arising from the former relationship.

3.4. Patrick Matthews failed to determine if Amanda Emerson Ambrose had motive to implicate plaintiff in an alleged crime.

3.5 Upon information and belief, Patrick Matthews made contact with a second confidential source, Dayna Emerson. Dayna Emerson is the parent of Amanda Ambrose. Patrick Matthews failed to determine if Dayna Emerson had motive to implicate plaintiff in an alleged crime.

3.6 Patrick Matthews submitted a sworn declaration for a search warrant to the Spokane County Superior Court on February 1, 2018. Within this sworn declaration, Patrick Matthews attests as the evidence in support of probable cause for the search warrant as follows: (a) Receipt of a complaint from a confidential source on August 10, 2017; (b) confirmation the confidential source has been continuously employed for a period of three years and had no significant criminal history; (c) corroboration of information provided by the confidential source concerning a legal and licensed marijuana producer and processor

COMPLAINT - PAGE 3

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1 business then partially owned by plaintiff; (d) confirmation through the Spokane County
2 Assessor that plaintiff owned the property located at 1426 North Bowdish; (e) comparison of
3 electric billings for the 1426 North Bowdish property; (f) an application to WSLCB for a
4 marijuana business submitted by plaintiff which was associated with the 1426 North Bowdish
5 property and discovery that the application was classified as Group 3 and Group 3 was
6 subsequently dissolved by the WSLCB and all application monies returned; (g) driving by the
7 1426 North Bowdish location and noticing the blinds were drawn. However, no odor of
8 marijuana was noticed during any of these visits; and (h) driving by the 1426 North Bowdish
9 property on January 29, 2018 and noticing the snow on the garage roof had melted and was
10 not in conformity with the other garages in the neighborhood.
11

12 3.7 Patrick Matthews further indicated in his February 1, 2018 sworn declaration
13 that he determined complaints had been made to the Department of Child Services concerning
14 plaintiff exposing his daughter to marijuana. Upon information and belief, these complaints
15 were made by Amanda Ambrose, plaintiff's ex-significant other and Patrick Matthews'
16 confidential source. Patrick Matthews failed to determine if the series of complaints were part
17 and parcel of an on-going family law dispute between plaintiff and Amanda Ambrose.
18

19 3.8 Prior to improperly seeking and executing a search warrant, Patrick Matthews
20 failed to determine that plaintiff was a valid medical marijuana recipient and valid medical
21 marijuana provider, pursuant to RCW 69.51A, and had been a valid medical marijuana
22 recipient and medical marijuana provider since 2013.
23

24 3.9 Patrick Matthews, with the assistance of Spokane County Sheriffs Deputies,
25 executed the improper search warrant on February 6, 2018 at plaintiff's 1426 North Bowdish
26

27 COMPLAINT - PAGE 4

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1 property. Execution of this search warrant caused significant damage to plaintiff's personal
2 and real property.

3 3.10 Following the execution of the improper search warrant, plaintiff was arrested
4 at 1407 East Sprague road and booked into Spokane County jail.

5 3.11 Plaintiff's arrest was made public and can be found, among other places, at
6 <https://www.kxly.com/news/spokane-valley-pot-bust-1/698328577> and
7 [https://www.krem.com/article/news/local/spokane-county/mans-legal-pot-permit-at-risk-after-](https://www.krem.com/article/news/local/spokane-county/mans-legal-pot-permit-at-risk-after-bust-in-spokane-valley/293-515928732)
8 [bust-in-spokane-valley/293-515928732](https://www.krem.com/article/news/local/spokane-county/mans-legal-pot-permit-at-risk-after-bust-in-spokane-valley/293-515928732) and
9 <https://twitter.com/RyanTVNews/status/961433361968345088>.

10 3.12 Following the improper search and seizure, and the improper arrest following
11 therefrom, plaintiff was required to retain an attorney to defend against the charges alleged by
12 Patrick Matthews and WSLCB.
13

14 3.13 Plaintiff's defense attorney brought a motion, within Spokane County Superior
15 Court Cause Number 18-1-00603-2, to suppress the search and seizure and being flawed due
16 to Patrick Matthews' numerous failures.
17

18 3.14 Following submission of pleadings and presentation of oral argument by
19 plaintiff's attorney and the Spokane County Deputy Prosecutor, the Court, through the
20 Honorable John Cooney, suppressed the search warrant. The Court issued written findings
21 and conclusion on November 2, 2018.
22

23 3.15 Plaintiff endured almost a year of emotional distress and concern over whether
24 his right to freedom would be restricted due to Patrick Matthews' failures and flawed
25 investigation.
26

27 COMPLAINT - PAGE 5

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1 3.16 Within the Court's November 2, 2018 ruling, the Court concluded as follows:
2 (a) the information provided to Patrick Matthews from his confidential source failed two
3 prongs of the *Aguilar-Spinelli* test; (b) the investigation conducted by Patrick Matthews did
4 not corroborate the information from the confidential source to cure the deficiency and
5 establish probable cause to support the search warrant; (c) Patrick Matthews confirmed
6 innocuous facts, such as covered windows, abnormally high electrical consumption and failed
7 to compare this consumption with other homes in the neighborhood or with his knowledge of
8 usage by marijuana grows; (d) Patrick Matthews did not see or smell marijuana from
9 plaintiff's 1426 North Bowdish residence; and (e) Patrick Matthews failed to indicate whether
10 or not there was a database of medical marijuana patients authorized to grow marijuana prior
11 to the application of the search warrant.
12

13
14 3.17 Based upon the numerous failures of Patrick Matthews, the Court concluded
15 there was insufficient information to establish probable cause for issuance of the search
16 warrant. All evidence obtained from the illegal search and seizure was suppressed, as well as
17 any information flowing from the fruit of the poisonous tree.

18 3.18 On November 8, 2018, the Spokane County Deputy Prosecutor filed a motion
19 to dismiss all charges against plaintiff with prejudice.
20

21 3.19 Due to plaintiff's unlawful arrest, Amanda Ambrose informed plaintiff, on
22 February 8, 2018, that she had notified Child Protective Services concerning plaintiff's
23 alleged criminal activity.
24
25
26

1 3.20 Due to plaintiff's unlawful arrest, Amanda Ambrose, on February 8, 2018,
2 served plaintiff with a restraining order preventing plaintiff from seeing or spending time with
3 his daughter. The restraining order alleged plaintiff had exposed his daughter to marijuana.

4 3.21 Due to the restraining order and CPS involvement, plaintiff was forced to
5 obtain a hair follicle test of his minor daughter, at his expense, to prove he had not exposed
6 his daughter to marijuana. The follicle test conclusively proved plaintiff had not exposed his
7 daughter to marijuana. The follicle test conclusively proved plaintiff had not exposed his
8 daughter to marijuana.

9 3.22 Due to plaintiff's arrest, he was required to obtain attorneys for issues within
10 the criminal justice system, as well as the family law justice system, at great personal
11 expense.

12 3.23 Plaintiff was required to borrow money to repair the damage caused by the
13 illegal search and seizure of his 1426 North Bowdish property and sell this property to pay for
14 legal expenses. The property was sold below market value due to the stigma caused by the
15 illegal search and seizure. The property was sold below market value due to the stigma caused by the
16 illegal search and seizure.

17 3.24 At all times relevant herein, the Fourth Amendment to the United States
18 Constitution was a well-established right and the contours of the Fourth Amendment
19 sufficiently clear that Patrick Matthews knew, or should have known, his actions violated the
20 Fourth Amendment rights of plaintiff.
21

22 3.25 At all times relevant herein, the WSLCB directed Patrick Matthews in his
23 actions and omissions which deprived plaintiff of his constitutional rights.
24
25
26

27 COMPLAINT - PAGE 7

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3.26 The WSLCB set in motion a series of acts by its subordinates that it knew, or should have known, would cause its subordinates to deprive plaintiff of his constitutional rights.

3.27 The WSLCB knew, or should have known, that Patrick Matthews was engaging in unconstitutional acts and that such conduct would deprive plaintiff of his constitutional rights and the WSLCB failed to prevent such conduct from occurring.

3.28 The WSLCB has inadequate training, recruiting and supervision of its subordinates and such failures caused plaintiff's constitutional rights to be deprived.

3.29 The WSLCB inadequate recruiting, training and supervision of its subordinates constitutes deliberate indifference to the indiscriminate violation of the constitutional rights of plaintiff.

IV. CAUSES OF ACTION:

COUNT I - VIOLATION OF 42 U.S.C. §1983 (UNLAWFUL SEARCH AND SEIZURE)

4.1 Plaintiff re-alleges paragraph 1.1 through 3.29, inclusive, as though fully set forth herein.

4.2 Patrick Matthews violated plaintiff's constitutional rights to be free from unlawful search and seizure.

4.3 Patrick Matthews failed to properly establish probable cause for the unlawful search and seizure of plaintiff and his personal property.

4.4 By means of his unlawful search and seizure, Patrick Matthews intentionally, or with deliberate indifference and callous disregard, deprived plaintiff of his right to be free

COMPLAINT - PAGE 8

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1 from unreasonable search and seizure in violation of the Fourth Amendment to the United
2 States Constitution.

3 4.5 As a direct and proximate result of Patrick Matthews' acts and omissions, with
4 respect to plaintiff's constitutional rights, plaintiff has been damaged in an amount to be
5 proven at time of trial.
6

7 **COUNT II - SUPERVISOR LIABILITY PURSUANT TO 42 U.S.C. §1983:**

8 4.6 The WSLCB is and was aware of Patrick Matthews' unlawful pattern and
9 practice in obtaining search warrants. The WSLCB awareness of such patterns and practice
10 and failure to take sufficient steps to alter the pattern and practices of Patrick Matthews,
11 constitutes an adoption and endorsement of such patterns and practices.
12

13 4.7 At all times relevant herein, the WSLCB directed Patrick Matthews in his
14 actions and omissions which deprived plaintiff of his constitutional rights.

15 4.8 The WSLCB set in motion a series of acts by its subordinates that it knew, or
16 should have known, would cause its subordinates to deprive plaintiff of his constitutional
17 rights.

18 4.9 The WSLCB knew, or should have known, that Patrick Matthews was
19 engaging in unconstitutional acts and that such conduct would deprive plaintiff of his
20 constitutional rights and the WSLCB failed to prevent such conduct from occurring.
21

22 4.10 As a direct and proximate result of the WSLCB's failure to properly recruit,
23 train and supervise Patrick Matthews, plaintiff has been damaged in an amount to be proven
24 at time of trial.
25

26
27 **COMPLAINT - PAGE 9**

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COUNT III – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS:

4.11 Defendants' disregard for plaintiff's constitutional rights was reckless and intentional.

4.12 Defendants' conduct in violating plaintiff's constitutional rights was extreme and outrageous.

4.13 Defendants' extreme and outrageous conduct caused plaintiff to suffer severe emotional distress in the form of mental anguish, indignation, wounded pride, shame, community embarrassment, despair and isolation, loss of usual activities, loss of reputation and loss of career advancement.

4.14 As a direct and proximate result of defendants' actions and omissions, plaintiff has been damaged in an amount to be proven at time of trial.

COUNT IV – INVASION OF RIGHT TO PRIVACY:

4.15 Plaintiff has a protected right to private affairs pursuant to Washington State Constitution Article I, §7.

4.16 Defendants' actions and omissions violated plaintiff's right to privacy without lawful justification.

4.17 As a direct and proximate result of defendants' violation of plaintiff's right to privacy, plaintiff has been damaged in an amount to be proven at time of trial.

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COMPLAINT - PAGE 10

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COUNT V – UNLAWFUL IMPRISONMENT:

4.18 Defendants' acts of arresting plaintiff based upon a flawed and defective search warrant, without probable cause and without exigent or emergent circumstances, unlawfully restrained plaintiff's physical liberty.

4.19 As a direct and proximate result of defendants' unlawful acts, plaintiff has been damaged in an amount to be proven at time of trial.

REQUEST FOR RELIEF:

WHEREFORE, having set forth his Complaint against defendants, plaintiff requests the following relief:

- A. Entry of judgment against defendants on all counts set forth above;
- B. For compensatory damages;
- C. For punitive or exemplary damages;
- D. For an award of costs and fees pursuant to 42 U.S.C. §1988;
- E. For pre-judgment interest and post-judgment interest at the maximum rate permitted by Law; and
- F. For such other relief as the Court deems equitable and just.

DATED this 14th day of October 2019.

MITCHELL & MITCHELL PLLC

By: _____

Andrew Mitchell, WSBA 30399
Vicki L. Mitchell, WSBA 31259
Attorneys for Plaintiff

COMPLAINT - PAGE 11

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Original Filed

OCT 14 2019

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

(Copy Receipt)

Clerk's Date Stamp

 <p>SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE</p>	<p>JUDGE TONY HAZEL 96</p>
<p>FAILING, PERRY</p> <p>Plaintiff(s)/Petitioner(s), vs. WASHINGTON STATE LIQUOR & CANNABIS BOARD</p> <p>Defendant(s)/Respondent(s).</p>	<p>CASE NO. 19-2-04342-32</p> <p>CASE ASSIGNMENT NOTICE AND ORDER (NTAS)</p> <p>CASE STATUS CONFERENCE DATE: JANUARY 17, 2020 AT 8:30 AM</p>

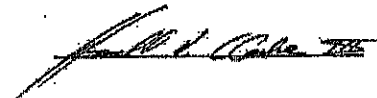
ORDER

YOU ARE HEREBY NOTIFIED that this case is preassigned for all further proceedings to the judge noted above. **You are required to attend a Case Status Conference before your assigned judge on the date also noted above. The Joint Case Status Report must be completed and brought to the Status Conference. A Case Schedule Order, with the trial date, will be issued at the Status Conference.**

Under the individual calendar system, the court will operate on a four-day trial week. Trials will commence on Monday, Tuesday, Wednesday or Thursday. Motion Calendars are held on Friday. All motions, other than ex parte motions, must be scheduled with the assigned judge. Counsel must contact the assigned court to schedule motions and working copies of all motion pleadings must be provided to the assigned court at the time of filing with the Clerk of Court. Pursuant to LCR 40 (b) (10), motions must be confirmed no later than 12:00 noon two days before the hearing by notifying the judicial assistant for the assigned judge.

Please contact the assigned court to schedule matters regarding this case. You may contact the assigned court by phone, court department e-mail or through the Spokane County Superior Court web page at <http://www.spokanecounty.org/1140/Superior-Court>

DATED: 10/14/2019



HAROLD D. CLARKE
PRESIDING JUDGE

NOTICE: The plaintiff shall serve a copy of the Case Assignment Notice on the defendant(s).

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

PERRY FAILING, an individual,

NO. 19-2-04342-32

Plaintiff,

NOTICE OF APPEARANCE

v.

(Clerk's Action Requested)

WASHINGTON STATE LIQUOR
AND CANNABIS BOARD, and
administrative agency of the State of
Washington; and PATRICK
MATTHEWS, individually and as
employee and agent of WASHINGTON
STATE LIQUOR AND CANNABIS
BOARD,

Defendant.

TO: MATTHEW FAILING, Plaintiff;

AND TO: VICKI MITCHELL, Plaintiff's Attorney

AND TO: CLERK OF THE COURT

YOU AND EACH OF YOU will please take notice that Defendants Washington State
Liquor and Cannabis Board and Patrick Matthews, by and through their attorneys, Robert W.
Ferguson, Attorney General, and Jennifer D. Loynd Assistant Attorney General, without waiving
objections as to improper service, jurisdiction or venue, hereby enter their appearance in the above-

1 entitled action and request that notice of any and all further proceedings in said action be served
2 upon the undersigned attorney at the address stated below.

3 **TRANSMISSION BY FAX OR BY ELECTRONIC MAIL DOES NOT**
4 **CONSTITUTE SERVICE, UNLESS AGREED IN WRITING OR UNLESS OTHERWISE**
5 **REQUIRED BY COURT RULE.**

6 DATED this 7/8 day of October, 2019.

7 ROBERT W. FERGUSON
8 Attorney General

9
10 JENNIFER D. LOYND, WSBA No. 33129
11 OID # 91023
12 Assistant Attorney General
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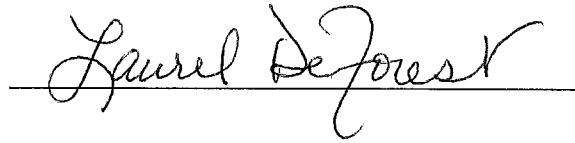
Declaration Regarding Service

I declare that I initiated service of a copy of this document on all parties or their counsel of record on the date below as follows:

Party	Method of Service
Andrew Mitchell Vicki L. Mitchell MITCHELL & MITCHELL PLLC 1710 North Washington Street, Suite 200 Spokane, Washington 99205 Phone: 509-315-9890 Fax: 509-315-9891 amitchell@mitchell-lp.com	<input checked="" type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> ABC/Legal Messenger <input type="checkbox"/> UPS Next Day Air or FedEx <input type="checkbox"/> By Fax at fax. no.: <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Hand delivered at _____ A.M/P.M.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

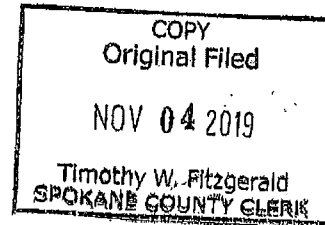
DATED this 31st day of October, 2019.



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2019 NOV 13 PM 2:02

ATTORNEY GENERAL'S OFFICE
TORTS DIVISION - OLYMPIA



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

PERRY FAILING, an individual,

Plaintiff,

v.

WASHINGTON STATE LIQUOR AND
CANNABIS BOARD, and administrative
agency of the State of Washington; and
PATRICK MATTHEWS, individually and
as employee and agent of WASHINGTON
STATE LIQUOR AND CANNABIS
BOARD,

Defendants.

No. 19-2-04342-32

NOTICE OF UNAVAILABILITY

TO: DEFENDANTS, and

TO: ROBERT W. FERGUSON and JENNIFER D. LOYND, your attorneys:

PLEASE TAKE NOTICE that the following attorneys will be unavailable during the
following dates:

ANDREW J. MITCHELL, will be unavailable November 8, 2019 through
November 25, 2019;

NOTICE OF UNAVAILABILITY - PAGE 1

MITCHELL & MITCHELL PLLC
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PHONE (509) 315-9890 / FAX (509) 315-9891

COPY

1 VICKI L. MITCHELL will be unavailable November 8, 2019 through
2 November 25, 2019.

3 Attorneys Andrew J. Mitchell and Vicki L. Mitchell will not be available during that
4 period of time for purposes of responding to and/or attending court proceedings or depositions
5 and respectfully requests no matters be scheduled, or correspondence issued of which would
6 require his direct attention or response during the time period mentioned above.

7 DATED this 4th day of November 2019.

8 MITCHELL & MITCHELL PLLC

9
10 By: 

11 Andrew Mitchell, WSBA 30399
12 Vicki L. Mitchell, WSBA 31259
13 Attorneys for Plaintiff
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27 NOTICE OF UNAVAILABILITY - PAGE 2

28 MITCHELL & MITCHELL PLLC
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SPOKANE, WASHINGTON 99205
PHONE (509) 315-9890 / FAX (509) 315-9891

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of November 2019, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Robert W. Ferguson
Jennifer D. Loynd
Attorney General of Washington
PO Box 40126
Olympia, WA 98504

☒ U.S. MAIL
☐ HAND DELIVERED
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Darla Arnold

NOTICE OF UNAVAILABILITY - PAGE 3

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STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

PERRY FAILING, an individual,

Plaintiff,

v.

WASHINGTON STATE LIQUOR AND
CANNABIS BOARD, and administrative
agency of the State of Washington; and
PATRICK MATTHEWS, individually
and as employee and agent of
WASHINGTON STATE LIQUOR AND
CANNABIS BOARD,

Defendants.

NO. 19-2-04342-32

DEFENDANTS WASHINGTON
STATE LIQUOR AND CANNABIS
BOARD AND PATRICK
MATTHEWS' ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT

Defendants WASHINGTON STATE LIQUOR AND CANNABIS BOARD (WSLCB)
and PATRICK MATTHEWS (Officer Matthews) (collectively "Defendants"), by and through their
undersigned counsel, and in answer to Plaintiff's Complaint, admit, deny, and allege as follows:

PARTIES:

1.1 Defendants are without knowledge or information sufficient to form a belief as to
the truth of the allegations contained in Paragraph 1.1 and, therefore, deny the same.

1.2 In answer to Paragraph 1.2, Defendants admit the same.

1.3 In answer to Paragraph 1.3, Defendants admit the same.

1 1.4 In answer to Paragraph 1.4, Defendants admit the same.

2 1.5 In answer to Paragraph 1.5, Defendants deny the same.

3 **JURISDICTION AND VENUE:**

4 2.1 In answer to Paragraph 2.1, Defendants re-assert their answers to Paragraphs 1.1
5 through 1.5.

6
7 2.2 Paragraph 2.2 alleges a legal conclusion, to which no answer is required and none
8 is given. To the extent an answer to the allegation contained in Paragraph 2.22 is required,
9 Defendants deny the same.

10 2.3 In answer to Paragraph 2.3, Defendants admit only that the acts giving rise to
11 Plaintiff's complaints occurred within Spokane County.

12 2.4 In answer to Paragraph 2.4, Defendants deny the same.

13 **FACTS:**

14
15 3.1 In answer to Paragraph 3.1, Defendants re-assert their answers to Paragraphs 1.1
16 through 2.4.

17 3.2 In answer to Paragraph 2.4, Defendants admit the same.

18 3.3 In answer to Paragraph 3.3, Defendants admit only that one complaint WSLCB
19 received concerning marijuana being illegally grown at the residence located at 1426 North
20 Bowdish Road in Spokane (Bowdish Road Residence) was made by Amanda Ambrose and that
21 Ms. Ambrose advised Officer Matthews that she had had a prior relationship with Plaintiff and they
22 had a child together.

23
24 3.4 In answer to Paragraph 3.4, Defendants deny the same.

1 3.5 In answer to Paragraph 3.5, Defendants admit only that Officer Matthews had
2 conversations with Dayna Emerson. Defendants are without knowledge or information sufficient
3 to form a belief as to the truth of the allegations that Dayna Emerson is Amanda Ambrose's parent.
4 Defendants deny the remainder of the allegations contained in Paragraph 3.5.

5 3.6 In answer to Paragraph 3.6, Defendants admit only that Officer Matthews submitted
6 a sworn declaration for a search warrant to the Spokane County Superior Court on February 1, 2018,
7 and the declaration included, but was not limited to, the information identified in Paragraph 3.6.

8 3.7 In answer to Paragraph 3.7, Defendants admit only that Officer Matthews' February
9 1, 2018, sworn declaration included, but was not limited to, information that numerous complaints
10 had been forwarded to various agencies including the Dept. of Child Services that Plaintiff was
11 growing marijuana at the Bowdish Road Residence and exposing his 2-year-old daughter to
12 marijuana and that Ms. Ambrose was one of the individuals who submitted complaints concerning
13 Plaintiff's marijuana-related activities at the Bowdish Road Residence. Defendants deny the
14 remaining allegations contained in Paragraph 3.7.

15 3.8 In answer to Paragraph 3.8, Defendants deny the same.

16 3.9 In answer to Paragraph 3.9, Defendants deny the same.

17 3.10 In answer to Paragraph 3.10, Defendants deny the same.

18 3.11 In answer to the Paragraph 3.11, Defendants admit only that news reporters,
19 including the three identified in Paragraph 3.11, reported information about Plaintiff's arrest.

20 3.12 In answer to Paragraph 3.12, Defendants deny the same.

21 3.13 In answer to Paragraph 3.13, Defendants admit the same.

22 3.14 In answer to Paragraph 3.14, Defendants admit the same.

1 3.15 In answer to Paragraph 3.15, Defendants are without knowledge or information
2 sufficient to form a belief as to the truth of the allegations contained in Paragraph 3.15 and,
3 therefore, deny the same.

4 3.16 In answer to Paragraph 3.16, Defendants admit only that the Findings of Facts
5 and Conclusions of Law signed by Judge Cooney on November 2, 2018, contained the
6 conclusions of law identified in Paragraph 3.16.

7
8 3.17 In answer to Paragraph 3.17, Defendants admit only that the Findings of Facts
9 and Conclusions of Law signed by Judge Cooney on November 2, 2018, included conclusions
10 that the search warrant executed at the Bowdish Road Residence was insufficient to establish
11 probable cause that criminal activity was occurring at the location, all evidence obtained from the
12 unlawful search must be suppressed including all physical evidence obtained during the search as
13 well as any statements that were derived as a fruit of the poisonous tree.

14
15 3.18 In answer to Paragraph 3.18, Defendants admit the same.

16 3.19 In answer to Paragraph 3.19, Defendants are without knowledge or information
17 sufficient to form a belief as to the truth of the allegations contained in Paragraph 3.19 and,
18 therefore, deny the same.

19 3.20 In answer to Paragraph 3.20, Defendants are without knowledge or information
20 sufficient to form a belief as to the truth of the allegations contained in Paragraph 3.20 and,
21 therefore, deny the same.

22
23 3.21 In answer to Paragraph 3.21, Defendants are without knowledge or information
24 sufficient to form a belief as to the truth of the allegations contained in Paragraph 3.21 and,
25 therefore, deny the same.

1 4.5 In answer to Paragraph 4.5, Defendants deny the same.

2 **COUNT II – SUPERVISOR LIABILITY PURSUANT TO 42 U.S.C. § 1983**

3 4.6 In answer to Paragraph 4.6, Defendants deny the same.

4 4.7 In answer to Paragraph 4.7, Defendants admit only that Officer Matthews is
5 employed by WSLCB and any acts and/or omissions by Officer Matthews were performed
6 within the course and scope of his employment. As to the remaining allegations contained in
7 Paragraph 4.7, Defendants deny the same.
8

9 4.8 In answer to Paragraph 4.8, Defendants deny the same.

10 4.9 In answer to Paragraph 4.9, Defendants deny the same.

11 4.10 In answer to Paragraph 4.10, Defendants deny the same.

12 **COUNT III – INTENTIONAL INFLICTION OF EMOTION DISTRESS**

13 4.11 In answer to Paragraph 4.11, Defendants deny the same.

14 4.12 In answer to Paragraph 4.12, Defendants deny the same.

15 4.13 In answer to Paragraph 4.13, Defendants deny the same.

16 4.14 In answer to Paragraph 4.14, Defendants deny the same.

17 **COUNT IV – INVASION OF RIGHT TO PRIVACY**

18 4.15 Paragraph 4.15 alleges legal conclusions, to which no answers are required and none
19 are given. To the extent answers to the allegations contained in Paragraph 4.15 are required,
20 Defendants deny the same.
21

22 4.16 In answer to Paragraph 4.16, Defendants deny the same.

23 4.17 In answer to Paragraph 4.17, Defendants deny the same.
24
25
26

COUNT V – UNLAWFUL IMPRISONMENT

4.18 In answer to Paragraph 4.18, Defendants deny the same.

4.19 In answer to Paragraph 4.19, Defendants deny the same.

EXPRESS DENIAL

Defendants deny each and every allegation in Plaintiff's Complaint that is not expressly admitted.

REQUEST FOR RELIEF

Defendants deny Plaintiff is entitled to the relief requested or to any relief whatsoever from Defendants. To the extent any allegations set forth in Plaintiff's Request for Relief may be deemed to constitute averments of material fact, they are denied.

AFFIRMATIVE DEFENSES

By way of further answer and affirmative defense, Defendants allege as follows:

1. Plaintiff has failed to state a claim upon which relief may be granted.
2. Plaintiff Perry Failing failed to file a Tort Claim identifying any alleged injuries or damages he sustained under theories of intentional infliction of emotional distress, invasion of right to privacy, and/or unlawful imprisonment prior to initiating his lawsuit as required by RCW 4.92.100.
3. Plaintiff Perry Failing has failed to perfect service on WSLCB as required by RCW 4.16.170.
4. As a marijuana producer and processor licensed by WSLCB pursuant to the laws of the State of Washington and regulations promulgated by WSLCB, Plaintiff had no cognizable interest under federal law, including the U.S. Constitution and the Fourth Amendment,

1 concerning possession of marijuana plants or related materials, no cognizable claim arising from
 2 Defendants' removal of contraband product or related materials from the residence owned by
 3 Plaintiff, and has incurred no related damages.

4 5. As a marijuana producer and processor licensed by WSLCB pursuant to the laws
 5 of the State of Washington and regulations promulgated by WSLCB, Plaintiff has no cognizable
 6 claim under the Washington State Constitution arising from Defendants' removal of contraband
 7 product and related materials from the residence owned by Plaintiff and has incurred no related
 8 damages.
 9

10 6. The State of Washington, its agencies, and agents are not subject to civil suit for
 11 damages under the 11th Amendment of the Constitution of the United States.

12 7. Plaintiff's claims against Officer Matthews are barred under qualified immunity.

13 14 8. At all times, Defendants acted in good faith in the performance of their duties and
 15 are therefore immune from suit for the matters alleged in Plaintiff's Complaint.

16 9. All actions of Defendants alleged as violations of Washington State statutes
 17 and/or common law manifest reasonable exercise of judgment and discretion by authorized
 18 public officials made in the exercise of governmental authority entrusted to them by State law
 19 and regulations promulgated by WSLCB and are neither tortious nor actionable.
 20

21 10. Discovery may show that Plaintiff's alleged damages were proximately caused
 22 or contributed to by actions of nonparties to this action.

23 11. Discovery may show that Plaintiff's alleged damages were caused or contributed
 24 to by Plaintiff's own actions, both intentional and negligent.

25 12. Discovery may show that that Plaintiff failed to mitigate alleged damages.
 26

1 13. Discovery may show that Plaintiff's alleged damages arise out conditions of which
2 Plaintiff had knowledge and to which Plaintiff voluntarily subjected himself.

3 14. Plaintiff's alleged property damages are limited by Chapter 69.50 RCW.

4 15. Defendants may be entitled to an offset from awards to Plaintiff and/or recovery
5 of monies paid to Plaintiff.
6

7 **RESERVATIONS**

8 Defendants reserve the right to amend their Answer to allege additional counterclaims,
9 third-party claims and/or affirmative defenses that may become known during the course of
10 discovery, and to make amendments either before or during trial, including asserting other
11 defense theories or conforming the pleadings to proof offered at the time of trial.
12

13 **DEFENDANTS' REQUEST FOR RELIEF**

14 Defendants pray that Plaintiff's Complaint be dismissed with prejudice and that Plaintiff
15 take nothing by its Complaint and that Defendants be allowed their costs and reasonable
16 attorneys' fees.

17 DATED this 13th day of November, 2019.

18
19 ROBERT W. FERGUSON
Attorney General

20
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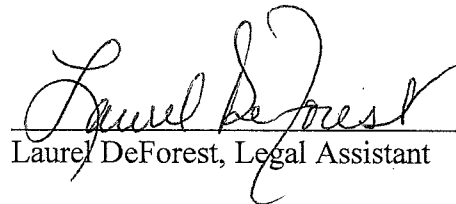
Declaration Regarding Service

I declare that I initiated service of a copy of this document on all parties or their counsel of record on the date below as follows:

Party	Method of Service
Andrew Mitchell Vicki L. Mitchell MITCHELL & MITCHELL PLLC 1710 North Washington Street, Suite 200 Spokane, Washington 99205 Phone: 509-315-9890 Fax: 509-315-9891 <u>amitchell@mitchell-lp.com</u> <u>vmitchell@mitchell-lp.com</u>	<input checked="" type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> ABC/Legal Messenger <input type="checkbox"/> UPS Next Day Air or FedEx <input type="checkbox"/> By Fax at fax. no.: <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Hand delivered at _____ A.M/P.M.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 14th day of November, 2019.


 Laurel DeForest, Legal Assistant